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Date:

Cubiotti, Kenneth G.

Time:

The Diocese of Rochester aka Roman Catholic Diocese of
Rochester, a religious corporation
Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester,
NY formerly St. Philip Neri Church of Rochester, New York, a
religious corporation
Panepinto an individual, Vincent

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE
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MONROE COUNTY CLERK



SUPREME COURT STATE OF NEW YORK
COUNTY OF MONROE

-----X
KENNETH G. CUBIOTTI,

Plaintiff,

v.

**VERIFIED COMPLAINT AND
DEMAND FOR JURY TRIAL**

Index No:

THE DIOCESE OF ROCHESTER (a/k/a
“Roman Catholic Diocese of Rochester”), a
religious corporation;

ROMAN CATHOLIC PARISH OF ST.
FRANCES XAVIER CABRINI,
ROCHESTER NY (formerly “St. Philip Neri
Church of Rochester, New York”), a
religious corporation; and

VINCENT PANEPINTO, an individual,

Defendants.

-----X

Plaintiff, KENNETH G. CUBIOTTI (also referred to herein as “Ken Cubiotti”), by and through undersigned counsel, brings this action against THE DIOCESE OF ROCHESTER (a/k/a “Roman Catholic Diocese of Rochester”); ROMAN CATHOLIC PARISH OF ST. FRANCES XAVIER CABRINI, ROCHESTER NY (formerly “St. Philip Neri Church of Rochester, New York”); and VINCENT PANEPINTO and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

I. JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR § 301 and § 302, because Defendants reside in the State of New York and committed tortious acts within the State.

2. Jurisdiction is proper because this Complaint seeks monetary damages in excess of \$25,000.00, exclusive of interest, costs, and attorney's fees.

3. Venue is proper in this Court pursuant to CPLR § 503. The Defendant The Diocese of Rochester has its principal place of business in Monroe County. The Defendant Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester NY has its principal place of business in Monroe County. The acts and omissions giving rise to this Complaint also occurred in Monroe County.

4. Plaintiff brings this suit within the extended time period as provided for in Sections 208 and 214-G of the Civil Practice Law.

II. PARTIES

5. Plaintiff Kenneth G. Cubiotti ("Plaintiff") is an adult resident of the State of New York, residing in Monroe County, New York and is otherwise *sui juris*.

6. Defendant The Diocese of Rochester is a Roman Catholic diocese and religious corporation organized pursuant to the Religious Corporations Law, licensed and doing business in the State of New York with a principal place of business at 1150 Buffalo Road, Rochester, New York 14624. At all relevant times, The Diocese of Rochester oversaw, managed, controlled, directed, and operated parishes, schools and churches within its geographical boundaries, including St. Philip Neri Church of Rochester, New York, where acts and omissions giving rise to this Complaint occurred, and Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester NY, the legal successor to St. Philip Neri Church. At all relevant times, The Diocese of Rochester hired, trained, oversaw, managed, controlled, and directed priests assigned to work in parishes or churches of the Diocese, including Fr. Vincent Panepinto. Defendant The Diocese of Rochester can be served at 1150 Buffalo Road, Rochester, New York 14624, by delivering the summons and complaint to its authorized agent Bishop Salvatore R. Matano, or to said Defendant's attorney,

Philip G. Spellane of Harris Beach PLLC at 99 Gamsey Road, Pittsford, New York 14534, whom said Defendant has also authorized to accept service of process.

7. Defendant Roman Catholic Parish of St. Frances Xavier Cabrini, Rochester NY (hereinafter “St. Frances Xavier Cabrini”) is a Roman Catholic parish within and under the authority of The Diocese of Rochester and a religious corporation organized pursuant to the Religious Corporations law with a principal place of business at 124 Evergreen St., Rochester, NY 14605 in Monroe County, New York. Through various corporate mergers, St. Frances Xavier Cabrini is the legal successor to St. Philip Neri Church of Rochester, New York, and based upon information and belief has assumed the liabilities of St. Philip Neri Church alleged herein. Defendant Roman Catholic Parish of St. Frances Xavier Cabrini can be served by delivering the summons and complaint to its attorney Philip G. Spellane of Harris Beach PLLC at 99 Gamsey Road, Pittsford, New York 14534, whom said Defendant has also authorized to accept service of process.

8. At all times material, Defendant Vincent Panepinto (also referred to herein as “Fr. Panepinto”) was a Diocesan seminarian, deacon or an ordained Diocesan priest within The Diocese of Rochester. Defendant The Diocese of Rochester hired, trained, formed, ordained and employed Defendant Vincent Panepinto. Defendant The Diocese of Rochester further assigned, supervised and managed Defendant Vincent Panepinto, including assigning him to parishes where he was exposed to children. The Diocese ordained Fr. Panepinto in 1967 and assigned Fr. Panepinto to be pastor of St. Philip Neri Church from 1968 to 1972. Fr. Panepinto was at all times material hereto an employee and/or agent of Defendant Diocese.

9. At all times material, Defendant St. Philip Neri Church hired, employed, supervised and/or managed Defendant Vincent Panepinto (“Fr. Panepinto”) as an ordained Diocesan Roman

Catholic priest. Fr. Panepinto was at all times material hereto an employee and/or agent of St. Philip Neri Church.

10. The provisions of Section 1602 of the CPLR do not apply to the within action including nondelegable duty and/or the doctrine of respondeat superior.

III. FACTUAL ALLEGATIONS

a) Plaintiff Ken Cubiotti's Introduction to Fr. Vincent Panepinto; The Abuse

11. On or about 1960, when Plaintiff Ken Cubiotti was approximately five years old, said Plaintiff began living with Joseph and Madeline Panepinto as a foster child. The Panepintos lived in Rochester, New York and had a son, Vincent Panepinto, who was at the time in training in a seminary owned and/or operated by The Diocese of Rochester.

12. At the time of his introduction to the Plaintiff Ken Cubiotti, Vincent Panepinto was attending and residing at St. Bernard's Seminary, located at 2260 Lake Ave., Rochester, New York, 14612. Bishop Bernard J. McQuaid, the first bishop of The Diocese of Rochester was the driving force behind the establishment of St. Bernard's Seminary. At all times material hereto, the Diocese of Rochester owned, managed, operated, and/or controlled St. Bernard's Seminary and was responsible for the formation, training, and conduct of its seminarians. While a seminarian residing at St. Bernard's Seminary, Vincent Panepinto frequently visited the Panepinto residence where Plaintiff Ken Cubiotti resided.

13. In 1967, The Diocese of Rochester, then under the direction of Fulton J. Sheen, D.D., the Bishop of The Diocese of Rochester, ordained Vincent Panepinto as a Roman Catholic priest. The Diocese assigned Fr. Panepinto to St. Philip Neri Church of Rochester, New York, located at 1776 Clifford Ave., Rochester, New York, 14609. Fr. Vincent Panepinto is listed in the 1968 Official Catholic Directory for the Diocese of Rochester as a priest in residence at St. Philip

Neri. Fr. Panepinto worked as a priest at St. Philip Neri until 1972 when The Diocese of Rochester transferred him to St. Anthony's Church in Elmira, New York.

14. At the time of the events described herein, Defendants The Diocese of Rochester and/or St. Philip Neri Church was the legal owner and/or tenant/occupier of the church located at 1776 Clifford Ave., Rochester, New York, 14609.

15. At all times material, Plaintiff Ken Cubiotti revered and trusted the Roman Catholic Church, The Diocese of Rochester, the bishop of The Diocese of Rochester, priests, seminarians, Fr. Panepinto and all Roman Catholic clergy. Plaintiff Ken Cubiotti was raised Roman Catholic, attended mass within the Diocese and took part in the sacraments. Plaintiff Ken Cubiotti was taught to believe seminarians and priests, including Fr. Panepinto, were special, sacred, pure and better than lay people. Plaintiff Ken Cubiotti was taught to trust seminarians and priests, to do what they said and to never disparage them.

16. From 1960, when Plaintiff Ken Cubiotti was approximately five years old, to about 1970, when said Plaintiff was approximately fifteen years old, Fr. Vincent Panepinto sexually assaulted, sexually abused, and/or engaged in unwanted sexual contact with the Plaintiff. Fr. Panepinto sexually assaulted, abused, and/or had sexual contact with said Plaintiff on the premises of St. Philip Neri Church and at the Plaintiff's home.

17. The first incident of abuse occurred when Plaintiff was approximately five years old. Plaintiff walked out of the bathroom in his parents' room and encountered Fr. Panepinto who asked Plaintiff if he wanted to "monkey around." Fr. Panepinto was wearing his seminary clothes, which were a sacred symbol of importance to Plaintiff; Plaintiff was in underwear only. Panepinto instructed Plaintiff to sit on Panepinto's face. Plaintiff did. Fr. Panepinto then fondled Plaintiff's genitals over his clothing.

18. Fr. Panepinto would frequently visit Plaintiff's home while a seminarian at St. Bernard's Seminary, and after he was ordained, while he was a priest in residence at St. Philip Neri. On occasion, Fr. Panepinto would stay overnight in Plaintiff's room. Plaintiff would sleep on the floor and Fr. Panepinto would sleep on the bed above him. As Plaintiff lay next to the bed, Fr. Panepinto would reach over the edge of the bed and masturbate Plaintiff over and under his clothing.

19. Fr. Panepinto acted in a priestly role towards Plaintiff. He encouraged Plaintiff to believe Plaintiff would be a priest someday. Fr. Panepinto would dress Plaintiff up in his priest clothes. As part of his priestly mentorship, Fr. Panepinto invited Plaintiff to stay with him at the Rectory of St. Philip Neri Church. Other priests living at the St. Philip Neri Rectory saw Plaintiff there staying with Fr. Panepinto in his private rooms. During these visits, Fr. Panepinto would sexually abuse Plaintiff by fondling his genitals and masturbating him.

20. Fr. Panepinto exerted authority over Plaintiff and instructed Plaintiff to remain silent about the abuse. Plaintiff feared what would happen if he disobeyed this priest, and he feared that he would be taken away from his foster family if he were to disclose the abuse to anyone.

21. Fr. Panepinto abused Plaintiff more than thirty times over the course of ten years. Almost all these incidents of abuse occurred at the Rectory of St. Philip Neri Church.

22. The last incident of abuse occurred during the summer of 1970 at Plaintiff's home. At that time, Plaintiff was approximately fifteen years old and a sophomore in high school. He confronted Fr. Panepinto about the abuse and made it clear that Fr. Panepinto would never touch him again.

23. Plaintiff again confronted Fr. Panepinto about the abuse in approximately 1985. At that time, Fr. Panepinto admitted that he was attending Sex Addicts Anonymous.

24. Plaintiff frequently saw other young boys around Fr. Panepinto, including a young boy named Victor at the Rectory of St. Michael's Church.

b) Defendants' Responsibility for the Abuse Committed by Fr. Panepinto

25. At all times relevant to the allegations set forth herein, Father Vincent Panepinto was a seminarian, deacon or priest employed, trained, ordained, assigned, supervised and managed by Defendant The Diocese of Rochester and was an employee and/or agent for said Defendant. All acts and omissions of Fr. Panepinto were done in the course and scope of his employment and/or agency for Defendant The Diocese of Rochester.

26. Upon ordination in 1967, The Diocese of Rochester assigned Fr. Panepinto to be a pastor at St. Philip Neri Church in Rochester, New York. Fr. Panepinto remained a priest in residence at St. Philip Neri until 1973.

27. In 1973, The Diocese of Rochester transferred Fr. Panepinto to St. Anthony's Church in Elmira, NY. He remained there through 1977.

28. In 1978, The Diocese of Rochester transferred Fr. Panepinto to Beckett Hall, affiliated with St. John Fisher College in Rochester, NY, where he served as spiritual director. He remained there through 1982.

29. In 1983, The Diocese of Rochester transferred Fr. Panepinto to St. Michael's Church in Rochester, NY. Fr. Panepinto was a pastor at St. Michael's and lived in the Rectory there through 1991.

30. In 1992, The Diocese of Rochester again transferred Fr. Panepinto, this time to St. Thomas Church in Elmira, NY. He remained at St. Thomas for less than a year.

31. In 1992, The Diocese of Rochester assigned Fr. Panepinto to Elmira Correctional Facility, where he served as chaplain of the prison until 1996.

32. In 1997, The Diocese of Rochester assigned Fr. Panepinto to be the chaplain at New York Drug Treatment Center in Willard, NY. He remained there until 2001. During this assignment, The Diocese of Rochester also employed Fr. Panepinto as a priest at St. Francis de Sales in Geneva, NY in 1998 and as a chaplain at Five Points Correctional Facility in Romulus, NY in 2001.

33. In 2002, The Diocese of Rochester again transferred Fr. Panepinto, this time to Corpus Christi Church in Rochester, NY. While serving at Corpus Christi, Fr. Panepinto also served as a chaplain at the Monroe County Jail from 2004 to 2007.

34. In 2006, The Diocese of Rochester assigned Fr. Panepinto to Our Lady of Mount Carmel, where he served as pastor through 2008. Concurrently with this assignment, Fr. Panepinto was also the priest at St. Francis Xavier in Rochester, NY.

35. In 2008, Corpus Christi, Our Lady of Mt. Carmel and Holy Redeemer/St. Francis Xavier merged to form Our Lady of the Americas, located at 864 E. Main St. in Rochester, NY. The Diocese of Rochester assigned Fr. Panepinto to serve as sacramental minister at Our Lady of the Americas from 2008 to early 2011.

36. In March 2011, The Diocese of Rochester placed Fr. Panepinto on “leave without privileges” following what the Diocese deemed to be a credible accusation of sexual abuse of a minor committed by Fr. Panepinto in the late 1960s.

37. In July 2011, Fr. Panepinto was arrested and charged with grand larceny for stealing \$10,000 from Our Lady of the Americas Church between 2007 and 2010.

38. By holding Fr. Vincent Panepinto out as safe to work with children, and by undertaking the custody, supervision of, and/or care of the minor Plaintiff, Defendants entered a special relationship with the minor Plaintiff. As a result of Plaintiff being a minor, and by

Defendants' undertaking the care and guidance of the then vulnerable Plaintiff, Defendants held a position of empowerment over Plaintiff.

39. Defendants, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. This empowerment prevented the Plaintiff from effectively protecting himself, and Defendants thus entered a special relationship with Plaintiff. By holding themselves out as a safe, moral, and trusted institution to adults caring for Plaintiff, Defendants induced said adults to entrust Plaintiff to Defendants and thereby deprived Plaintiff of the protection of said adults.

40. At all times material, Fr. Panepinto's sexual abuse of Plaintiff was foreseeable. The problem of clergy sexual abuse of minors is well-documented throughout the history of the Roman Catholic Church. As far back as 1051, St. Peter Damian wrote in the *Book of Gomorrah* that clergy who defiled boys should be dismissed from holy orders. (*Book of Gomorrah*, Ch. 6). Later, St. Peter Damian wrote in his *Rule of the Monastery of Compludo*, about the punishment for "A cleric or monk who seduces youths or young boys" being public flogging, loss of tonsure and six months in jail, among other punishment. In 1143 or 1144, a professor at the University of Bologna named Gratian, known as the "Father of the Science of Canon Law," identified in his work the *Decretum*, the sexual sin by a priest that he called *stuprum pueri*, which is the sexual use of boys by an adult male.

41. In 1961, the Vatican issued an instruction on the training of candidates for the priesthood, which was based upon the 1917 Code of Canon Law which stated:

Advancement to religious vows and ordination should be barred to those who are afflicted with evil tendencies to homosexuality or pederasty, since for them the common life and priestly ministry would constitute serious dangers.

42. This knowledge that Catholic clergy were sexually abusing minors continued

through the middle ages and into recent history. In 1962, Pope John XXIII approved the publication *De Modo Procedendi in Causis Solicitationis*, a special procedural law for solicitation of sex in the confessional. This document contained prohibitions prohibiting clergy from having sex with minors under the age of sixteen. This document was distributed to every bishop and major religious superior in the world and was to be kept by them with the deepest secrecy. In addition, this document reflected the Catholic Church's insistence on maintaining the highest degree of secrecy regarding the worst sexual crimes perpetrated by clergy.

43. In 1947, a priest named Fr. Gerald Fitzgerald founded a religious order of priests called the Servants of the Paracletes. This religious order was founded in order to assist and treat Catholic clergy who experienced mental health problems. By 1952, Fr. Fitzgerald wrote that he had already treated priests who had sexually abused minors. By 1963, the Paracletes were treating so many sexually abusive clergy that they developed a shorthand code, "code 3," to describe the offense. By 1966, the Paracletes began specializing in treatment of pedophile Catholic clergy.

44. As early as 1971, the issue of sexual misconduct by clergy was being discussed in the Commonwealth of Massachusetts. Bishop Bernard Flanagan, Bishop of Worcester (Massachusetts) testified that as early as February 1971, there had been discussions about sexual misconduct among priests. According to Bishop Flanagan, "I think by 1971 I had heard of other cases of this type [sic] sexual misconduct and I knew that they were taking place in other dioceses too."

45. That same year, Dr. Conrad Baars and Dr. Anna Terruwe presented a scholarly paper titled *The Role of the Church in the Causation, Treatment and Prevention of the Crisis in the Priesthood* to the 1971 Synod of Bishops at the Vatican and to the U.S. Conference of Catholic Bishops about psychiatric problems in Catholic clergy and how psychosexual immaturity

manifested itself in heterosexual and homosexual activity. In 1990, psychologist and priest, A.W. Richard Sipe, published a study involving 1,500 priests that concluded that six (6) percent of priests were sexually involved with minors.

46. In 1985, the public prosecution of a priest in Lafayette, Louisiana led to the creation of the 100-page document titled “*The Problem of Sexual Molestation by Roman Catholic Clergy: Meeting the Problem in a Comprehensive and Responsible Manner*” by Fr. Thomas Doyle, F. Ray Mouton and Fr./Dr. Michael Peterson. This document was distributed to every Catholic Bishop and religious order ordinary in the United States. A significant portion of this document describes how significant the sexual abuse of children by Catholic clergy had become.

47. As to Fr. Panepinto, specifically, Defendants knew or should have known that Fr. Panepinto was a sexual risk to children. While at Seminary, Fr. Panepinto (then a seminarian/deacon) openly engaged in public, sexual contact by touching other, young seminarians in a sexual way. He was openly engaged in relationships with two fellow seminarians, Dave Simon and Jim Buccaria, throughout the duration of his time at St. Bernard’s Seminary. Plaintiff Ken Cubiotti specifically witnessed Panepinto and Simon holding hands and engaging in public displays of affection. The Diocese of Rochester allowed Fr. Panepinto to graduate from seminary and empowered him through ordination with authority and power over lay adults and children. Fr. Panepinto kept young boys in the rectory, including Plaintiff Ken Cubiotti, and other priests of the Diocese saw this, including Rev. Charles B. Connell at St. Philip Neri. The Diocese of Rochester’s many reassignments, and the type of reassignments, further provide circumstantial evidence that the Diocese knew Fr. Panepinto had problems.

CAUSES OF ACTION**FIRST CAUSE OF ACTION AGAINST DEFENDANT VINCENT PANEPINTO****SEXUAL ABUSE/BATTERY**

48. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs as if fully set forth herein.

49. On multiple occasions, Defendant Vincent Panepinto intentionally made contact with the Plaintiff's body, touching the Plaintiff's genitals.

50. Defendant Vincent Panepinto's touching of Plaintiff was offensive and unwanted.

51. As a direct and proximate result of Defendant Vincent Panepinto's offensive and unwanted sexual touching, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, psychological injuries, loss of ability to engage in gainful activity, loss of income and other damages, past and future.

52. As a direct and proximate result of Defendant Vincent Panepinto's offensive and unwanted sexual touching, Plaintiff was injured and damaged; said injuries and damages include, but are not limited to, physical injury, emotional distress, loss of enjoyment of life, loss of ability to engage in gainful activity, loss of income and loss of ability to perform his normal daily activities and to obtain the full enjoyment of life.

53. As a direct and proximate result of Defendant Vincent Panepinto's offensive and unwanted sexual touching, Plaintiff has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

WHEREFORE, Plaintiff demands judgment against Defendant Vincent Panepinto for compensatory damages, costs and such other and further relief as this Court deems proper.

SECOND CAUSE OF ACTION AGAINST DEFENDANTS**THE DIOCESE OF ROCHESTER AND ST. FRANCES XAVIER CABRINI****NEGLIGENCE/GROSS NEGLIGENCE**

54. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs as if fully set forth herein.

55. Defendants allowed Fr. Panepinto to have unsupervised and unlimited access to minor children while in a position of authority over them, including at St. Philip Neri Church in Rochester, New York, located at the time within The Diocese of Rochester.

56. At all times material, Fr. Panepinto was employed by Defendant The Diocese of Rochester and St. Philip Neri and was an agent for them.

57. At all times material, Fr. Panepinto remained under the direct supervision, employ, and control of The Defendant Diocese of Rochester and St. Philip Neri.

58. Upon information and belief, before Plaintiff was sexually abused by Fr. Panepinto, Defendants had actual or constructive knowledge of material facts regarding Fr. Panepinto's sexual misconduct, impulses, and behavior, and each had actual or constructive knowledge that he posed a sexual risk of harm to children.

59. Despite clear indications of danger, Defendants took no steps to discover the specific nature of Fr. Panepinto's problems or to determine whether he was fit to work with children or to protect children from him, thereby increasing the likelihood that Plaintiff would be harmed.

60. Plaintiff was raised in a devout Roman Catholic family, regularly celebrated mass, received the sacraments, and participated in church-related activities. Plaintiff, therefore, developed great admiration, trust, reverence, and respect for the Roman Catholic Church and its

agents, The Diocese of Rochester and its agents, including the Bishop, and Fr. Panepinto.

61. Defendants held Fr. Panepinto out as a qualified Roman Catholic priest who was safe with children and undertook the education, religious instruction, and spiritual and emotional guidance of Plaintiff. The Bishop of The Diocese of Rochester exercised a direct role over Plaintiff. Accordingly, Plaintiff placed trust in Defendants so that Defendants and their agents gained superiority and influence over Plaintiff. Defendants entered a special relationship with the Plaintiff and his family.

62. Defendants knew or should have known that some of the leaders and people working at Catholic institutions within The Diocese of Rochester were not safe for children.

63. Defendants knew or should have known that they lacked sufficient information about whether their leaders and people working at Catholic institutions within The Diocese of Rochester were safe around children.

64. Defendants knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities within The Diocese of Rochester.

65. Defendants knew or should have known that they lacked sufficient information about whether there was a risk of child sex abuse for children participating in Catholic programs and activities within The Diocese of Rochester.

66. Defendants knew or should have known that they had other agents who had sexually molested children. Defendants knew or should have known that child molesters have a high rate of recidivism. Defendants knew or should have known that there was a specific danger of child sex abuse for children participating in Defendants' programs.

67. Defendants held their leaders and agents out as people of high morals and as possessing immense power. They taught families and children to obey, respect and revere these

leaders and agents.

68. Defendants solicited youth and families to their programs and schools, including Plaintiff. Defendants specifically marketed to youth and families in order to recruit youth and families to their programs.

69. Defendants held out the people that worked in the programs, including Fr. Panepinto as safe for children/youth.

70. Defendants made negligent representations to Plaintiff, adults caring for Plaintiff and his family during each and every year of his minority. Plaintiff, said adults and/or his family relied upon these representations, which resulted in Plaintiff being put in a vulnerable situation with Fr. Panepinto and subjected to his sexual misconduct and harm.

71. Defendants owed Plaintiff a duty of reasonable care because they assumed duties owed to Plaintiff and had superior knowledge about the risk that Fr. Panepinto posed to Plaintiff, the risk of abuse in general in their programs, and/or the risks that their facilities posed to minor children. Defendants had the duty to protect the moral purity of Plaintiff and other Roman Catholic children within The Diocese of Rochester.

72. Defendants owed Plaintiff a duty of reasonable care because they assumed that duty and because they solicited youth and parents for participation in their youth programs, including Plaintiff.

73. Defendants owed Plaintiff a duty of reasonable care because they undertook custody of minor children, including Plaintiff.

74. Defendants owed Plaintiff a duty of reasonable care because they promoted their facilities and programs as being safe for children, including Plaintiff.

75. Defendants owed Plaintiff a duty of reasonable care because they held out their

agents, including Fr. Panepinto, to the public, including Plaintiff, as safe to work with children.

76. Defendants owed Plaintiff a duty of reasonable care because they encouraged parents and children, including Plaintiff, to spend time with their agents; and/or encouraged their agents, including Fr. Panepinto, to spend time with, interact with, and recruit children.

77. Defendants had a duty to Plaintiff to protect Plaintiff from harm because Defendants' actions created a foreseeable risk of harm to Plaintiff.

78. Defendants breached their duties by exposing Plaintiff to a known pedophile.

79. Defendants breached their duties by exposing Plaintiff to a priest Defendants knew or should have known was a pedophile

80. Defendants breached their duties by recruiting, hiring, and maintaining Fr. Panepinto in a position of authority over children, including Plaintiff.

81. Defendants breached their duties by exposing Fr. Panepinto to children, including Plaintiff.

82. Defendants breached their duties by leaving Fr. Panepinto alone with children unsupervised, including Plaintiff.

83. Defendants breached their duties by inducing Plaintiff and his foster parents to entrust Plaintiff to Fr. Panepinto.

84. Defendants breached their duties by failing to follow policies and procedures designed to prevent child sex abuse and/or failing to implement sufficient policies and procedures to prevent child sex abuse.

85. Defendants breached their duties by failing to take reasonable measures to make sure that policies and procedures to prevent child sex abuse were working.

86. Defendants breached their duties by failing to adequately inform families and

children, including Plaintiff, of the known risks of child sex abuse within The Diocese of Rochester.

87. Defendants breached their duties by holding out their employees and agents, including Fr. Panepinto, as safe and wholesome for children to be with.

88. Defendants breached their duties by failing to investigate risks of child molestation.

89. Defendants breached their duties by failing to properly train the workers at institutions and programs within Defendants' geographical confines.

90. Defendants breached their duties by failing to have any outside agency test their safety procedures.

91. Defendants breached their duties by failing to protect the children, including Plaintiff, in their programs from child sex abuse and failing to adhere to the applicable standard of care for child safety.

92. Defendants breached their duties by failing to investigate the amount and type of information necessary to represent their institutions, programs, and leaders and people, including Fr. Panepinto, as safe.

93. Defendants breached their duties by failing to respond to and/or investigate information of improper conduct with children of their employee and agent, Fr. Panepinto.

94. Defendants breached their duties by failing to properly train their employees to identify signs of child molestation by fellow employees.

95. Defendants breached their duty to use ordinary care in determining whether their facilities were safe and/or to determine whether they had sufficient information to represent their facilities as safe.

96. Defendants breached their duty of care by recruiting, hiring, and maintaining Fr.

Vincent Panepinto at their facilities.

97. Defendants breached their duty of care by maintaining a dangerous condition on the premises of their facilities (i.e., a priest Defendants knew or should have known posed a risk of pedophilic harm to children).

98. Defendants breached their duty of care by holding out their facilities as a safe and moral place for children, knowing the facilities were not safe nor moral.

99. Defendants breached their duty of care by failing to have sufficient policies and procedures to prevent abuse at their facilities.

100. Defendants breached their duty of care by failing to investigate risks at their facilities.

101. Defendants breached their duty of care by failing to properly train the workers at their facilities and failing to have any outside agency test their safety procedures.

102. Defendants breached their duty of care by failing to investigate the amount and type of information necessary to represent their facilities as safe.

103. Defendants breached their duty of care by failing to train their employees properly to identify signs of child molestation by fellow employees.

104. Defendants breached their duties to Plaintiff by holding out clergy members, including Fr. Panepinto, as safe, moral, and trustworthy people and by failing to warn Plaintiff, the adults caring for Plaintiff, and/or Plaintiff's family of the risk that Fr. Panepinto posed and the known risks of child sexual abuse by clerics in general.

105. Defendants breached their duties to Plaintiff by failing to warn Plaintiff about any of the knowledge that the Defendants had about child sex abuse perpetrated by clergy or Fr. Panepinto.

106. Defendants breached their duties to Plaintiff by failing to report Fr. Panepinto's abuse of children to the police and law enforcement.

107. Defendants further breached their duties by hiding a pedophile and engaging in a cover-up of abuse perpetrated by Fr. Panepinto.

108. As a direct and proximate result of Defendants' negligence, gross negligence, and breaches of duty, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, psychological injuries, loss of ability to engage in gainful employment, loss of income and other losses and damages, past and future.

109. As a direct result of Defendants' negligence, gross negligence, and breaches of duty, Plaintiff was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life.

110. As a direct result of Defendants' negligence, gross negligence, and breaches of duty, Plaintiff has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

WHEREFORE, Plaintiff demands judgment against Defendants The Diocese of Rochester and St. Frances Xavier Cabrini for compensatory damages, costs and such other and further relief as this Court deems proper.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS

THE DIOCESE OF ROCHESTER AND ST. FRANCES XAVIER CABRINI

RESPONDEAT SUPERIOR/VICARIOUS LIABILITY

111. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs as if fully set forth herein.

112. At all times material, Fr. Panepinto was employed by, or an agent of, Defendants The Diocese of Rochester and St. Philip Neri.

113. At all times material, Fr. Panepinto was on duty as a priest 24 hours per day, 7 days per week.

114. At all times material, Fr. Panepinto remained under the direct supervision, employ, and control of the Defendants.

115. At all times material, Defendants had the right to control the manner and means of Fr. Panepinto's performance.

116. At all times material, Defendants paid Fr. Panepinto's salary and paid for Fr. Panepinto's health insurance and other benefits.

117. At all times material, Defendants furnished an office and other materials, supplies, and tools required for Fr. Panepinto to perform in his position as a priest.

118. At all times material, Defendants controlled the premises where Fr. Panepinto performed as a priest.

119. At all times material, Defendants had the power to terminate the employment of Fr. Panepinto.

120. Defendants allowed Fr. Panepinto to have unsupervised and unlimited access to young children at St. Philip Neri Church, located at the time within The Diocese of Rochester.

121. Among other duties, Defendants employed Fr. Panepinto to operate programs, including youth, altar boy and spiritual counseling programs at St. Philip Neri.

122. Defendants created a master-servant relationship with Fr. Panepinto, employing him to interact and supervise children participating in programs at St. Philip Neri.

123. At times material hereto, unwanted sexual contact by Fr. Panepinto upon Plaintiff

occurred during his regular working hours and at the place of his employment with Defendants while performing duties of a priest on behalf of his employers.

124. Fr. Panepinto engaged in unpermitted, harmful, and offensive sexual contact with the Plaintiff on the physical premises of and around St. Philip Neri Church. Fr. Panepinto sexually assaulted Plaintiff when Plaintiff was a minor and without Plaintiff's consent.

125. The sexual contact by Fr. Panepinto occurred in the course and scope of his employment with Defendants.

126. The sexual contact by Fr. Panepinto was generally foreseeable to Defendants.

127. Upon information and belief, before Plaintiff was sexually abused by Fr. Panepinto, Defendants had actual or constructive knowledge of material facts regarding Fr. Panepinto's sexual misconduct, impulses, and behavior but failed to act on that knowledge and exposed Plaintiff as a child to Fr. Panepinto, thereby increasing the likelihood that Plaintiff would be harmed.

128. The sexual contact by Fr. Panepinto was closely connected to what he was employed to do as a priest with Defendants, and/or was otherwise naturally incidental to his job duties.

129. Fr. Panepinto's conduct was motivated, at least in part, by a desire to serve his employer's business interests or otherwise meet the objectives of his employment, however misguided.

130. Alternatively, Fr. Panepinto's conduct constituted an authorized, minor deviation from his employment that was authorized and/or ratified by Defendants.

131. As a direct and proximate result of Fr. Panepinto's conduct, Plaintiff has suffered damages as set forth herein.

WHEREFORE, Plaintiff demands judgment against Defendants The Diocese of Rochester and St. Frances Xavier Cabrini for compensatory damages, costs and such other and further relief as this Court deems proper.

FOURTH CAUSE OF ACTION AGAINST DEFENDANTS
THE DIOCESE OF ROCHESTER AND ST. FRANCES XAVIER CABRINI
NEGLIGENT HIRING, RETENTION, AND SUPERVISION

132. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.

133. At all material times, Defendants The Diocese of Rochester and St. Frances Xavier Cabrini, by and through their agents, managers, employees, and directors owed a duty to Plaintiff to use reasonable care to protect his safety, care, well-being and health while he was under the care and custody or in the presence of the Defendants. These duties encompassed the use of reasonable care in the hiring, retention and supervision of Fr. Panepinto and otherwise providing a safe environment for children.

134. Prior to the sexual misconduct perpetrated by Fr. Panepinto upon Plaintiff, Defendants knew, or in the exercise of reasonable care, should have known, of the general problem of Catholic clergy engaging in sexual misconduct with children who were in The Diocese of Rochester and St. Philip Neri programs.

135. Prior to the sexual misconduct perpetrated by Fr. Panepinto upon Plaintiff, Defendants knew, or in the exercise of reasonable care, should have known, that Fr. Panepinto was unfit for the duties assigned to him, that he did not exhibit appropriate behavior with children, and he otherwise posed a risk of perpetrating unwanted sexual contact upon children.

136. Given actual or constructive knowledge of Fr. Panepinto's dangerous propensities,

the Defendants had a duty to act reasonably in all decisions relating to his hiring, supervision, and retention as an employee.

137. Defendants failed to exercise reasonable care in one or more of their decisions to hire, supervise, and retain Fr. Panepinto and therefore exposed Plaintiff to an unreasonable risk of harm.

138. Defendants affirmed and ratified Fr. Panepinto's misconduct with Plaintiff. Given the actual and constructive knowledge of the likelihood that Fr. Panepinto and/or other clergy would engage children in unwanted sexual contact, the unwanted sexual contact of Plaintiff was reasonably foreseeable to Defendants.

139. Defendants and their agents had superior knowledge of the likelihood that Fr. Panepinto would engage in unwanted sexual contact with children that he encountered in his position as a priest and had a duty to take precautions to lessen the risk that Plaintiff would be the victim of unwanted sexual contact.

140. At all relevant times, Defendants' acts and omissions created an environment which fostered unwanted sexual contact and exploitation against the people it had a duty to protect, including Plaintiff.

141. At all relevant times, Defendants had inadequate policies and procedures to protect children entrusted to their care and protection, including Plaintiff, which substantially contributed to the creation of a dangerous environment.

142. As a direct and proximate result of the negligence of Defendants, Plaintiff suffered severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life, and has incurred and/or will incur costs for treatment in the future. These injuries are permanent and ongoing in nature.

WHEREFORE, Plaintiff demands judgment against Defendants The Diocese of Rochester and St. Frances Xavier Cabrini for compensatory damages, costs and such other and further relief as this Court deems proper.

FIFTH CAUSE OF ACTION AGAINST DEFENDANTS

THE DIOCESE OF ROCHESTER AND ST. FRANCES XAVIER CABRINI

NEGLIGENCE/PREMISES LIABILITY

143. Plaintiff realleges and incorporates all paragraphs as if set forth fully herein.

144. Plaintiff was a business invitee of Defendants when Fr. Panepinto engaged him in unwanted sexual contact.

145. Defendants owed Plaintiff a duty to protect him from dangerous conditions on their premises that they knew about, or in the exercise of reasonable care, could have discovered.

146. Defendants owed Plaintiff a duty to provide a reasonably safe environment where he would be free from the threat of unwanted sexual contact while on Defendants' premises.

147. Defendants owed Plaintiff a duty to take reasonable precautions to ensure his safety while on the premises of Defendants.

148. Prior to the sexual misconduct perpetrated by Fr. Panepinto upon Plaintiff, Defendants knew, or in the exercise of reasonable care, should have known, of the general problem of priests and other clergy engaging in sexual misconduct with children, including on their premises.

149. Prior to the sexual misconduct perpetrated by Fr. Panepinto upon Plaintiff, Defendants knew, or in the exercise of reasonable care, should have known, that Fr. Panepinto was unfit for the intimate duties assigned to him, that he did not exhibit appropriate behavior with

children, and otherwise posed a risk of perpetrating unwanted sexual contact upon children.

150. Defendants breached the duty owed to Plaintiff by failing to make the premises reasonably safe for Plaintiff despite what they knew or should have known about the existence of a potential threat of harm to Plaintiff on their premises.

151. Defendants breached the duty they owed to Plaintiff by failing to warn Plaintiff of the dangers and risks involved in going onto the premises at St. Philip Neri given their superior knowledge of the potential risk of harm to Plaintiff.

152. At all relevant times, Defendants had inadequate policies and procedures to protect children entrusted to their care and protection, including Plaintiff, which substantially contributed to the creation of a dangerous environment.

153. As a direct and proximate result of the negligence and gross negligence of Defendants, Plaintiff suffered severe and permanent psychological, emotional and physical injuries, shame, humiliation, loss of ability to engage in gainful activity, loss of income and the inability to lead a normal life, and has incurred and/or will continue to incur costs for treatment and other injuries and damages. These injuries and damages are permanent and ongoing in nature.

WHEREFORE, Plaintiff demands judgment against the Defendants, and for a sum in excess of the jurisdictional limits of all lower courts, together with the costs and

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disbursements and other expenses necessary in this action.

Rochester, New York

Dated: August 14, 2019

Yours, etc.,



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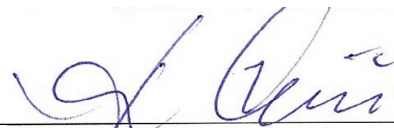
VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF MONROE) ss:

Kenneth G. Cubiotti affirms under penalty of perjury, that he has read the foregoing COMPLAINT and knows the contents thereof; that the same is true to the affirmant's own knowledge, except at to those matters therein stated to be on information and belief and as to these matters affirmant believes them to be true.

Dated: Rochester, New York

August 14, 2019



Kenneth G. Cubiotti